

and to execute instruments necessary for that purpose. Should acquisition by eminent domain become necessary, only the Trustee need be made a party, and in any event the proceeds received shall be held by the Trustee for the benefit of those entitled to the use of the common property, roads or easements.

(5) To prevent as Trustee of an express trust, any infringement and to compel the performance of any restriction set out in this Indenture or established by law, and also any rules and regulations issued by said Trustee covering the use of said Common Land or any matters relating thereto. This provision is intended to be cumulative and not to restrict the right of any lot owner to proceed in his own behalf, but the power and authority herein granted to the Trustee is intended to be discretionary and not mandatory.

(6) To clean up rubbish and debris and remove grass and weeds from and to trim, cut back, remove, replace and maintain trees, shrubbery and flowers upon any vacant or neglected lots, the owners thereof may be charged with the reasonable expenses so incurred. The Trustee or its officers, agents or employees shall not be deemed guilty or liable for any matter of trespass or any other act for any such injury, abatement, removal or planting.

(7) To consider, approve or reject any and all plans and specifications for any and all buildings or structures, fences, exterior television and/or radio antennas, detached buildings, outbuildings, accessory buildings, swimming pools or tennis courts proposed for construction and erection on said lots, proposed additions to such buildings or alterations in the external appearance of buildings already constructed, it being provided that no buildings or structures, fences, exterior television and/or radio antennas, detached buildings, outbuildings, accessory buildings, swimming pools, tennis courts or other

MARKUP #1 ->

MARKUP #1 · CONFLICTS WITH FED LAW

BOARD & COUNSEL REVIEW

Sec. i (p. 7): Blanket ban, sub-1-meter size cap, or prior approval requirement on satellite dishes or antennas is preempted by federal FCC OTARD regulations.

Statutory / Legal Reference: 47 C.F.R. § 1.4000 (FCC OTARD Rule)

Statutory Comparison: The FCC Over-the-Air Reception Devices rule (47 C.F.R. § 1.4000, as expanded by the 2021 OTARD Report and Order, FCC 21-10) preempts community association restrictions that prohibit, charge application fees for, require prior architectural approval for, or impose sub-1-meter (39.37-inch) diameter caps on the installation, maintenance, or use of television broadcast antennas, direct-broadcast satellite dishes 1 meter or less in diameter, and fixed wireless broadband antennas (including hub and relay antennas) situated on property within the exclusive use or control of the owner/tenant.

CURRENT WORDING IN DOCUMENT:

and all buildings or structures, fences, exterior television and/or radio antennas, detached buildings, outbuildings, accessory buildings, swimming pools or tennis courts proposed for construction and erection on said lots, proposed additions to such buildings or

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Provided that this restriction shall not prohibit or require prior approval for any owner or occupant installing an antenna, fixed wireless broadband hub/relay device, or satellite dish of one meter (39.37 inches) or less in diameter within areas under the owner's or occupant's exclusive use or control, in accordance with FCC OTARD regulations (47 C.F.R. § 1.4000).

ISSUE #1